

10-10-1: TITLE:

This chapter shall be known and may be cited as *THE SUMMIT COUNTY WATER BANKING AND CONCURRENCY ORDINANCE* . (Ord. 436, 11-14-2002)

10-10-2: APPLICABILITY:

This chapter applies to all unincorporated areas of the county within the Snyderville Basin planning district, plus the geographical area of the promontory development and property and to all public drinking water systems, including all shareholder owned mutual water companies, regulated public utilities or governmental entities, and applies to all surface and ground water sources of drinking water. This chapter does not apply to small water systems having less than fifteen (15) full time service connections or to individually owned drinking water wells serving a single residence. (Ord. 436, 11-14-2002)

10-10-3: DEFINITIONS:

The following defined terms are used throughout this chapter:

AUDIT: A detailed review and investigation of a water supplier's water source production and water quality records, metered use records, and any and all files relating to the water supplier's compliance with the requirements of this chapter and the regulations of the DDW.

AVERAGE YEARLY DEMAND: The quantity of water required by DDW regulations to be delivered to a consumer by a water supplier during a typical year expressed in acre-feet.

CERTIFY: A report from the district engineer to the Summit County director of health containing the district engineer's recommendation for approval or rejection of a water supplier's supply/demand study, based upon the district engineer's review and evaluation of the data submitted by the water supplier.

COMMITMENT OF SERVICE LETTER: An irrevocable, contractual commitment in letter form issued by a water supplier to a customer, in consideration for payment of the water supplier's impact or connection fees. A customer must have a commitment of service letter as a condition to the issuance of a building permit.

CUSTOMER: The customer is a lot owner or other consumer of water through a culinary water distribution system operated by a water supplier, and whose name appears on the commitment of service letter required by this chapter.

DDW: The division of drinking water of the department of environmental quality of the state of Utah.

DEQ: The department of environmental quality of the state of Utah.

DIRECTOR OF HEALTH: The director of the Summit County health department, under the direction of the Summit County board of health, or his or her designee.

DISTRICT ENGINEER: A licensed professional engineer meeting all of the necessary qualifications of a DDW staff engineer, who may be hired and employed by the DEQ or may be an independent contractor hired by DEQ to fill this position, and assigned specifically to Summit County by means of an interlocal agreement between the DEQ and the county, as authorized by Utah Code Annotated section 11-13-101 et seq. The district engineer's duties shall include, but are not limited to, enforcement of DDW regulations and providing technical assistance to the county in the review of supply/demand studies and supporting the county in the implementation of this chapter. The district engineer's duties may be performed by an alternate district engineer to be designated by the county, when the district engineer is on vacation or otherwise unavailable. The district engineer may perform such other duties relating to areas of jurisdiction of the DEQ as may be agreed to by the county and DEQ by interlocal agreement.

EQUIVALENT RESIDENTIAL CONNECTION (ERC): A term commonly used to evaluate service connections to consumers other than the typical residential domicile. Public and private water system management is expected to review metered drinking water volumes delivered to nonresidential connections and estimate the equivalent number of residential connections that these represent. All source capacity data (including residential connections) are ultimately reduced to the ERC common unit for equal treatment and comparative statistics. This information is finally utilized in evaluation of the system's source, storage and delivery capabilities. A typical ERC in Summit County uses approximately one thousand two hundred (1,200) gallons per day for peak day demand; however, the ERC may vary from water system to water system, in recognition of the differences in topography, elevation, average lot sizes, types of vegetation, and exposure - all of which affect outside water use requirements.

EXISTING LOTS OR DEVELOPMENT: Any building lot or development for which a completed application for development or site plat approval had been submitted to Summit County on or before March 13, 2001.

MRWSSD: Mountain regional water special service district, a political subdivision of the state of Utah, providing water services throughout the Snyderville Basin of Summit County, Utah.

NEW DEVELOPMENT: Any development project for which a completed application for a development plat approval was filed with the Summit County planning department after March 13, 2001.

PEAK DAY DEMAND: The amount of water delivered to a consumer by a water supplier on the day of highest consumption, generally expressed in gallons per day (gpd), or gallons per minute (gpm), averaged over a peak day. Water systems are sized to deliver the peak day demand and fire flows to each customer on the system.

PEER REVIEW: Anonymous technical review of a water supplier's supply/demand study, and other related water supplier records maintained pursuant to this chapter, performed by a qualified independent expert. The peer review may include, but is not limited to, water supply/demand studies, water quality, water source performance data, system and storage capacity, a rerating of water sources, water rights, and water conservation programs.

PROJECT OR DEVELOPMENT: The project or development to receive water service from a water supplier, whether residential or commercial in nature.

SMALL WATER SUPPLIER: A water supplier serving fewer than fifteen (15) connections and more than one.

SOURCE CAPACITY: The quantity of water required by the DDW regulations to meet the peak daily demand in gallons per minute (gpm) and average yearly volume in acre-feet per year (acft/yr) from a DDW approved water source for an ERC, factoring indoor culinary use, outdoor irrigation use, and any other beneficial use of water such as livestock water, snowmaking or industrial use. The calculations will be broken into zones or subdistricts within a water system where multiple sources serve multiple or distinct (normally unconnected) service areas. This definition applies to all ground water sources (including wells, springs or tunnels), as well as treated and untreated surface water sources.

SUPPLY/DEMAND STUDY: An annually updated study, as is further defined in section [10-10-10](#) of this chapter, detailing the currently available water rights, water source capacity, reserve source capacity, storage capacity, system capacity, the current number of service connections, outstanding commitment for service letters and other system demands, any surplus capacity, and the number of new ERCs the water supplier can serve with this surplus capacity. The supply/demand study will also include a rolling five (5) year forecast of anticipated new service connections and other system

demands, and a financial and capital improvement plan to meet the forecasted demands. The supply/demand study shall also include a one page executive summary page, in accordance with subsection [10-10-10B4](#) of this chapter, summarizing all relevant data for ease of review by the public.

SURPLUS CAPACITY: Existing source capacity in excess of any reserve requirements for drought and emergency needs mandated by DDW regulations or by this chapter, and in excess of that quantity of water required by DDW regulations to meet the service demands of the water supplier's existing customers, any outstanding commitments for new service, or other demand obligations as identified in the water supplier's annual supply/demand study.

SYSTEM CAPACITY: The water supplier's water distribution system infrastructure, including the hydraulic capacity of its pipelines, pumping and treatment facilities, storage facilities and other related facilities to deliver the required drinking water to the end customer.

WCAB: The water concurrency advisory board. An advisory board appointed by the Summit County board of commissioners to advise and assist the Summit County commissioners in ensuring that quality drinking water, irrigation water, and snowmaking water and water for other beneficial uses will be available to all of its citizens.

WATER SUPPLIER: Any public or private water system, with fifteen (15) or more full time connections to its water distribution system, whether public or private, providing wholesale or retail water service, including areas served by municipalities outside of their corporate boundaries. "Private or public", as used in this chapter, means profit or nonprofit, regulated or nonregulated by the public service commission, including all mutual water systems or public systems of any nature with fifteen (15) or more full time occupancy service connections. Weber Basin water conservancy district is exempt from regulation by this chapter; however, those water suppliers purchasing water under contract from the Weber Basin water conservancy district must comply with this chapter.

WILLING TO SERVE LETTER: A letter issued by a water supplier on a standard county issued form to a developer of a project or development, indicating that the water supplier will provide water service to the project or development; provided, that the developer complies with all of the rules and regulations of the water supplier for the receipt of water service. (Ord. 436, 11-14-2002; amd. 2004 Code)

10-10-4: INTERLOCAL COOPERATION AGREEMENT:

The county will enter into an interlocal cooperation agreement as authorized by Utah Code Annotated section 11-13-101 et seq., with the DEQ for the employment of a district engineer by July 1, 2001, or as soon thereafter as the position can be funded and staffed pursuant to the interlocal cooperation agreement. The district engineer may be a contract employee of the DEQ. The county may hire a consulting engineer to perform these services as the interim district engineer, under the interim rules enacted by this chapter, who will serve until such time as the department of environmental quality staffs the district engineer position. It is the intent of this chapter that the district engineer be either a DEQ employee or an independent contractor employee of DEQ, whose sole employment is as district engineer to serve the needs of Summit County as per the interlocal cooperation agreement.

A. County To Provide Funding: The county will provide ongoing funding throughout the term of the agreement, and any extensions thereof, to employ the district engineer, including salary, benefits and reasonable expenses. The county will also provide the district engineer an office within the county health and/or planning departments, or at such other location as the county determines, and will provide all required support services for the district engineer.

B. Fee To Be Imposed: The county may charge an annual fee to all water companies regulated by this chapter, in an amount to be determined by the board of county commissioners from time to time, to

equitably and proportionately defray cost of the district engineer. The annual fee will be determined based upon ratio of the number of connections being served in each regulated water supplier divided by the total number of connections being served by all regulated water suppliers in each year. The county may also charge an impact fee to new development to proportionately offset the costs of the district engineer.

C. Tasks To Be Negotiated: The specific tasks to be performed by the district engineer shall be set forth in the interlocal cooperation agreement to be negotiated by the county and DEQ. Generally, the district engineer shall enforce DDW regulations, and decisions of the district engineer relating to DDW regulations may be appealed to the drinking water board created under Utah Code Annotated section 19-4-103. In addition, the district engineer will provide the county technical assistance in the review and certification to the county director of health of the annual supply/demand study required by this chapter. The district engineer will make his or her recommendations relating to the supply/demand study to the county director of health, whose decision is the final county action. The decision of the director of health may be appealed as provided by law. The district engineer may also perform other DEQ tasks, such as enforcement of water quality regulation and work in other areas within the jurisdiction of the DEQ that are of concern to the county. To the extent the district engineer performs tasks in addition to those related to drinking water, the costs shall be paid separately by the county and will not be charged to the regulated water suppliers under this chapter. (Ord. 436, 11-14-2002)

10-10-5: INTERCONNECT ALL WATER SYSTEMS AND CREATE WATER BANK OF EXISTING SURPLUS SOURCE CAPACITY:

A. Connection Of Water Suppliers' Systems: To the extent legally and physically possible, the existing water distribution systems within the Snyderville Basin will be interconnected to facilitate the transfer of banked water, as well as emergency deliveries of water to maintain fire flow storage and for public health and safety purposes.

B. MRWSSD To Make Physical Connections: The MRWSSD will make the physical interconnections in accordance with plans and specifications approved by the district engineer and DDW regulations. Any such interconnection shall be subject to the inspection and approval of the water suppliers whose systems are being interconnected.

C. Allocation Of Costs Of Interconnections: The MRWSSD may pass the cost of the interconnections onto all water suppliers who participate in the water bank as a cost of gaining access to the banked water supply so as to recover its capital costs in making the interconnections. The county board of commissioners, whose decision shall be the final, shall resolve any dispute as to how the costs should be allocated among those water suppliers participating in the water bank. The decision of the board of commissioners may be appealed as provided by law. (Ord. 436, 11-14-2002)

10-10-6: CREATION OF WATER BANK TO SHARE EXISTING SURPLUS CAPACITY:

A. Creation Of Water Bank: There is hereby created a water bank through which existing surplus capacity of a water supplier may be made available for short term use by other water suppliers to ensure that existing service connections have adequate water to meet the basic needs of each customer connected to a water system.

1. Administered By MRWSSD: The water bank will be administered by the MRWSSD.

2. Coordination With Division Of Water Rights: The MRWSSD will work with the water suppliers who desire to participate in the water bank to jointly file any required applications with the division of water rights to facilitate the short term sharing of water resources through the water bank.

B. Surplus Capacity Into Water Bank: Any water supplier having surplus capacity may make its surplus capacity available for use through the water bank to be administered by MRWSSD.

C. Water To Be Banked On Year To Year Basis: Surplus capacity would be committed to the water bank on a yearly basis by January 2 of each year, and would be available for rent through the water bank during the ensuing year.

1. Renting Of Banked Water: Water companies lacking surplus capacity can rent banked surplus capacity through the water bank on a year to year basis, at a price to be set by the MRWSSD in consultation with the parties banking water.

2. Fees For Rental Of Banked Water: Fees paid for banked water will be passed through by MRWSSD to the parties banking the water, less a reasonable administrative fee paid to the MRWSSD in an amount determined by the county board of commissioners. (Ord. 436, 11-14-2002)

10-10-7: USE OF BANKED WATER TO PROVIDE SERVICE TO EXISTING CONNECTIONS, NEW CONNECTIONS ON PLATTED LOTS AND NEW DEVELOPMENT PLATS:

A. Serve Existing Connections: Water rented through the water bank will be used only to augment the renting water supplier's ability to serve its existing customers within its service area, thereby lessening any physical shortage of source capacity so that the water supplier can meet the public health, safety and welfare needs of the existing connections to its system.

B. New Construction On Existing Platted Lots: New construction on platted lots or development sites existing as of March 13, 2001, within a water supplier's service area can be served only if the water supplier has surplus capacity (exclusive of the use of banked water) to allow new service connections to be made, as certified to by the district engineer and concurred in by the county board of commissioners, in accordance with standards established by DDW regulations and this chapter.

1. Purchase Of Surplus Capacity: Any water supplier with surplus capacity, as demonstrated by the water supplier's approved supply/demand study, may sell a perpetual right to all or some portion of its surplus capacity to another water supplier on terms to be negotiated and agreed to by the buying and selling water suppliers. This purchased surplus capacity could then be used to support the issuance of commitment of service letters to new customers on existing lots, or to new development, within its service area. The cost of the purchased surplus capacity will be passed onto new customers creating the new demand in the form of an impact fee in public water systems, or as part of the connection fee in private water companies, and will not be absorbed as a general operating cost of the water supplier.

2. Adjustment Of Source Capacity Inventories: Any permanently purchased surplus capacity would be credited to the purchasing water supplier's source capacity inventory and deducted from the selling water supplier's source capacity inventory.

3. Transfer Of Purchased Surplus Capacity Through Interconnected Systems: The purchased surplus capacity would be wheeled through the interconnected water systems to deliver the water from the selling water supplier to the purchasing water supplier, subject to the various water suppliers entering into reciprocal wheeling agreements as provided in subsection [10-10-9A](#) of this chapter.

C. New Development; Banked Water Not Available For Use In Service Of New Development: Due to the temporary nature of the banked water supply, no banked water would be available for use through the water bank, or otherwise, for the platting of and service to new development.

1. Willing To Serve Letters: Water suppliers can issue willing to serve letters to the developers of new development only if the water supplier demonstrates through its approved five (5) year plan as a part of its approved supply/demand study, that it presently has sufficient surplus capacity or that through the implementation of its five (5) year capital improvement and financial plans, as contained in its supply/demand study, it will have the source capacity, storage capacity, water rights and system capacity available at the time required to provide service to the new development.

2. Prerequisites: The district engineer's certification and the concurrence of the county director of health of the water supplier's ability to serve new development based upon the water supplier's five (5) year plan, is a condition precedent to the water supplier's issuance of a willing to serve letter and of the county's approval of a new development plat. Commitment of service letters shall not be issued to customers within a new development until the water supplier, as certified by the district engineer, has the presently available physical water source capacity, source capacity reserves, water rights, system capacity and storage capacity required by the DDW's regulations and this chapter, to meet the water service requirements of the new customers. (Ord. 436, 11-14-2002)

10-10-8: WILLING TO SERVE LETTERS, COMMITMENT OF SERVICE LETTERS AND ISSUANCE OF BUILDING PERMITS:

A. Willing To Serve Letter Required For Plat Approval: As part of the development plat approval process, the water supplier shall issue a willing to serve letter in a form prescribed by the county to the developer of a new development parcel, indicating the water supplier's willingness to provide water service to the new development and stating that it either presently has, or that in accordance with its five (5) year forecast contained within its supply/demand study, it will have, available the water rights, source capacity, reserve capacity, system capacity and storage capacity required to provide the service at the pressure, volume and quality required by DDW regulations and this chapter in time to meet the projected demand.

B. Amend Five Year Plan, If Necessary: If the ERCs for this new development are not already included within the water supplier's current five (5) year demand projections, it will amend its five (5) year supply/demand study to factor in these new ERC demand requirements and submit its amended supply/demand study to the district engineer for review and certification of the water supplier's ability to provide service to the new development. Certification of the district engineer and the concurrence of the county director of health of the amended supply/demand study is a condition precedent to receiving plat approval.

C. Commitment Of Service Letter Required For Building Permit: Customers must obtain a commitment of service letter from the water supplier providing drinking water service in that area as a precondition to issuance of a building permit.

1. Present Ability To Provide Service: A water supplier may not issue a commitment of service letter to a customer unless the water supplier, as certified by the district engineer, and concurred in by the county director of health, has the present ability to deliver physical water in the quantities, at the pressure and of a quality required by DDW regulations and this chapter.

2. Consideration: The commitment of service letter shall be issued in consideration of and within five (5) working days of the customer's payment of the water supplier's impact fees or connection fees.

3. Irrevocable Commitment Of Resources: By the acceptance of a customer's payment of the water supplier's impact fees or connection fees and the issuance of a commitment of service letter to a customer, a water supplier will be deemed to have entered into an irrevocable, contractual commitment of water rights, water source capacity, reserve capacity, system capacity and storage capacity required to meet the service requirements of an ERC within the water supplier's service area, including water to meet the reasonable landscape irrigation requirements of the ERC, so that water service can be provided on demand.

4. Standby Fees: A water supplier issuing a commitment of service letter to a customer may charge that customer a standby maintenance fee to offset the costs of maintaining the water distribution system in a ready to serve status, in an amount approved through its rate making process. The fee may commence upon the issuance of the commitment of service letter. (Ord. 436, 11-14-2002)

D. Failure To Serve A Misdemeanor: Absent one of the conditions set forth in subsection D2 of this section, the failure of a water supplier to honor a commitment of service letter and to provide service to the customer on demand is a class C misdemeanor, punishable as provided in section 1-4-1 of this code. County criminal enforcement shall be in addition to any applicable penalties imposed by state law and DDW regulation. (Ord. 436, 11-14-2002; amd. 2004 Code)

1. Civil Action Preserved: Nothing contained herein shall prevent a customer who has received a commitment of service letter and then been denied service by a water supplier from pursuing any civil remedy available to the customer.

2. Deferral Of Service Commitment: A water supplier that has issued a commitment of service letter to a customer may defer providing water service without liability to the customer if, between the date of issuance of the commitment of service letter and the date service is requested, the water supplier:

a. Loss Of Source: Has lost one or more water sources due to drought, mechanical failure or other causes reasonably beyond the control of the water supplier.

b. Loss Of Reserve Capacity: The water supplier's reserve source capacity has dropped below the level required by DDW regulations and this chapter.

c. River Administration: The water supplier has been ordered by the state engineer, or his duly authorized river commissioner, to curtail diversions and use of water due to drought, priority administration of the water rights within the Snyderville Basin or other lawful administrative orders prohibiting the water supplier from making new service connections at that time.

d. Legal Process: Lawful order of any court of competent jurisdiction.

e. System Or Facilities Failure: Water system failure or loss or damage to a storage facility or major pipeline components of a water distribution system rendering it temporarily impossible for the water supplier to connect new users to the system.

f. Emergency Conditions: Other emergency conditions that are reasonably beyond the control and foreseeability of the water supplier.

3. Notification: A water supplier who has experienced an event listed in subsection D2 of this section, or other emergency conditions that are reasonably beyond the control and foreseeability of the water supplier, shall notify the county through the district engineer, in writing, within twenty four (24) hours of the occurrence of the event. The failure to so notify the county is a class C misdemeanor.

4. Duty To Cure: A water supplier that has experienced an event listed in subsection D2 of this section, and has notified the county as required by subsection D3 of this section, is authorized to defer providing service to customers holding commitment of service letters without liability to the customer. The water supplier shall take all reasonable steps to resolve this situation so that service can be provided as soon as reasonably practicable.

5. Restoration Of Service: Water service shall be provided to a customer holding a commitment of service letter within thirty (30) days following the resolution of the conditions for deferral of service referenced in subsection D2 of this section. The failure of a water supplier to connect a customer holding a commitment of service letter after the conditions for deferral of service have been resolved is a class C misdemeanor and will be subject to prosecution by the county. (Ord. 436, 11-14-2002)

0-10-9: RENTED BANKED WATER TO BE WHEELED THROUGH EXISTING PIPELINE NETWORKS THROUGH COOPERATIVE AGREEMENTS AMONG WATER SUPPLIERS:

A. Reciprocal Carriage Agreements: All water suppliers in the Snyderville Basin will be encouraged to enter into reciprocal agreements to wheel banked water through their systems so that water short areas

may rent water through the water bank or purchase the surplus capacity of a willing seller and receive the delivery of the rented or purchased water through the interconnected distribution lines.

1. Carriage Charge For Transporting Rented Water: Any water supplier wheeling rented, banked water through another water supplier's distribution system will pay the transporting entity a carriage charge to transport the water in an amount determined by the transporting entity. The carriage charge shall be limited to actual costs of carriage plus a reasonable and proportionate share of the costs of operation and maintenance of the wells, pump stations and distribution pipelines used to produce and wheel the purchased water. The carriage charge can be passed on to customers by the water supplier in the form of a surcharge on its service fees. Any dispute over the amount of a carriage charge shall be referred to the county director of health, whose decision on the amount of the carriage charge shall be final, unless the water supplier is a regulated public utility, in which case the rate review would occur at the public service commission in accordance with its regulations.

2. Perpetual Delivery Of Purchased Surplus Capacity: A water supplier who purchases a perpetual right to use surplus capacity of another water supplier must in addition to a carriage charge, pay a reasonable and proportionate amount of the capital costs of the infrastructure used by the transporting water supplier to deliver the purchased surplus capacity to the purchasing water supplier. The terms of the reciprocal wheeling agreements are to be negotiated by the purchasing water supplier and the transporting water supplier or suppliers who will wheel water to the purchasing water supplier.

B. Deliveries Of Wheeled Water Metered: Rented or purchased surplus capacity will be metered in and out of systems to account for deliveries. The party renting banked surplus capacity or purchasing the surplus capacity of another water supplier will bear any conveyance losses.

C. Guaranteed Water Quality: Each water supplier, as a part of the reciprocal carriage agreements, will guarantee to those water suppliers who will carry water for them, that the banked water introduced into the interconnected water systems will be of culinary quality, will meet all primary and secondary water quality standards of the DDW, and agree to indemnify and save the transporting water supplier harmless from any and all claims, liens, damages and liability, including costs and reasonable attorney fees, resulting from or in any way related to the transport of water through their system for the benefit of another water supplier, except for the negligence of the transporting water supplier.

D. Exchanges Through Water Bank To Minimize Interbasin Transfers Of Water: The MRWSSD is to work with the state engineer regarding the use of banked water anywhere throughout the basin. In the absence of state engineer approval, banked East Canyon Creek water will be used only in the East Canyon Creek drainage. Banked Silver Creek water will be used only in the Silver Creek drainage and, to the extent possible, the MRWSSD will facilitate exchanges through the water bank to make water available where it is needed. (Ord. 436, 11-14-2002)

10-10-10: WATER SUPPLY/DEMAND STUDY SUBMITTED ANNUALLY:

A. Supply/Demand Study And Five Year Forecast: Water suppliers will file annually a water supply/demand study, in a form prescribed by the county.

B. Contents Of Study And Five Year Forecast: At a minimum, the study will show the currently available water rights, water source capacity, reserve source capacity, storage capacity, system capacity, the current number of service connections, outstanding commitment for service letters and other system demands, any surplus capacity and the number of new ERCs that it can serve with its surplus capacity. The supply/demand study will also include a rolling five (5) year forecast of anticipated new ERCs and other system demands and a capital improvement and financing plan to meet this anticipated demand.

1. Identify New Source And System Upgrades: The supply/demand study will identify the need for additional water sources, upgrading of system and storage capacities, and the timing when these

improvements will be required to meet anticipated service demands within their system, based upon a rolling five (5) year forecast.

2. Capital Facilities Plan: The supply/demand study will contain a capital facilities plan as well as a financial plan to show economic ability to develop new source capacity, and other system and storage capacities, to keep pace with anticipated new system demands on system as disclosed in the five (5) year forecast.

3. Plans To Be Updated Annually: As part of the initial supply/demand study and any subsequent annual update, each water supplier will supply daily and/or monthly production data on all wells and other water sources for 2002. For water sources that have been in service for more than one year, the water supplier will also provide all available production records from all preceding years for which each source has been in service.

4. Annual Summary Page: The WCAB will develop a summary form that shall be completed by the water supplier and submitted annually with its updated supply/demand study, showing in summary form its water rights, source capacity, storage capacity, number of ERCs currently connected and receiving service, the number of outstanding commitment of service letters and other system demands. This summary form will be available to the public through the district engineer.

5. Reviewing Fee: The county may charge a reasonable fee for processing and reviewing the annual supply/demand study and any amendments to any such study.

C. Source Capacity Reserve Requirements: Water suppliers will maintain reserves of source capacity as required by DDW regulations. However, for older wells or other water sources for which DDW has not imposed a reserve requirement, the water supplier will hold in reserve at least fifteen percent (15%) of the source's most recent rated capacity, as protection against the interruption of service to its existing customers. In order to waive this fifteen percent (15%) reserve requirement, the district engineer must find that there is an adequate reserve already built into the DDW rating based upon performance data so as to protect existing customers. The district engineer may require a water supplier to hold more than fifteen percent (15%), but not more than thirty three percent (33%), of the source's DDW rated capacity in reserve, if the water supplier has only a single source of supply. In addition to maintaining the required reserve source capacity, single source systems will be encouraged to interconnect their distribution systems with other water suppliers to provide access to emergency supplies of backup source capacity.

1. Decline In Source Capacity: If a water supplier's five (5) year supply/demand study demonstrates a declining trend in source production, the district engineer will notify the water supplier that it must augment its source capacity by developing or acquiring additional state approved sources of drinking water.

2. Loss Of Reserve Capacity: If a water supplier's five (5) year supply demand study demonstrates that its reserved source capacity is dropping below the reserves required by DDW regulations or this chapter, the district engineer will not certify the water supplier's five (5) year water supply/demand study to the county director of health, and the director will not approve the supply/demand study. No new connections will be made to the water system, until such time as the water supplier develops or acquires additional source capacity so that it can meet the needs of existing customers and maintain its required reserved source capacity before it makes new service connections to new customers.

D. Testing Of Existing Wells And Sources: Existing wells and other sources of drinking water will be retested by the water supplier at the direction of the district engineer, if production or flow records indicate more than a seasonal deviation in production or flow levels and recovery levels, and/or a material change in water quality, using testing protocol that conforms to DDW regulations. Existing

wells and other sources of drinking water may be rerated at any time by the district engineer at the request and at the expense of the water supplier.

E. Base Line Data To Be Provided For All New State Approved Sources: Water suppliers will provide as a part of their supply/demand study baseline well test data for new wells and for other state approved sources of drinking water, using testing protocol that conforms to DDW regulations.

F. Other Related Data: Water suppliers will also provide any and all other data reasonably required by the district engineer that is related to source production and water quality.

G. Filing Of Initial Supply/Demand Study: All water suppliers regulated by this chapter shall submit their initial supply/demand study, including their initial five (5) year new demand forecast to the district engineer no later than June 30, 2002. Each water supplier will file its annually updated supply/demand study with the district engineer no later than January 2 of each succeeding year. The supply/demand study will also identify the availability of surplus source capacity the water supplier is willing to place in the water bank for that year, or whether it would need to rent water through the water bank to meet the service requirements of its existing customers.

H. Review And Approval Of Supply/Demand Study And Five Year Plan: The district engineer shall review each annually updated supply/demand study for compliance with DDW regulations and the requirements of this chapter. The district engineer will certify in writing to the county director of health that:

1. Compliance With Applicable Regulations: The water supplier has complied with the requirements of this chapter and all applicable DDW and county regulations;
2. Present Ability To Serve Existing Customers: That it has the present ability to provide service to its existing customers and to those customers holding outstanding commitment for service letters;
3. Service To New Customers: That based upon the water supplier's five (5) year forecast of new demand and through the implementation of its capital facilities and financial plans, it will have the ability to provide service to a predetermined number of new ERCs and may issue willing to serve letters to that predetermined number of ERCs within new development.
4. County To Approve: Upon receipt of the district engineer's certification required by this subsection, the county director of health, in the exercise of his reasonable discretion, shall either approve or reject the supply/demand study.

I. Rejection Of Supply/Demand Study: If the district engineer reasonably believes that the water supplier's supply/demand study, or the data upon which the study is based, does not demonstrate the water supplier's ability to serve its existing customers and outstanding commitments for service, and/or fails to document the ability of the water supplier to provide service to projected new development, the district engineer may recommend to the county director of health that they reject the supply/demand study.

1. Decision To Be In Writing: The director's decision approving or rejecting the supply/demand study shall be in writing, and if rejected, the decision document shall specify the reasons for its rejection. The written decision will be provided to the water supplier within a reasonable time following the submission of its supply/demand study, which for purposes of this chapter means thirty (30) days, unless unusual conditions exist that delay the response. The decision document shall be a public record, and accessible as provided by state law.

2. DDW Regulations: If the rejection relates to the water supplier's failure to comply with DDW regulations, the water supplier may pursue an appeal of the director's decision to the drinking water board.

3. Chapter Requirement: If the rejection relates to the water supplier's failure to comply with the requirements of this chapter, other than those regulated by DDW, the water supplier may either pursue peer review or appeal the director's decision as provided by law.

4. Amend Supply/Demand Study: The water supplier may amend a rejected supply/demand study to respond to the written objections of the district engineer and the county, and resubmit the amended supply/demand study to the district engineer. The district engineer shall again review the supply/demand study and certify in writing his or her recommendation to the county director of health, who shall either approve or reject the supply/demand study as provided in subsection H of this section or this subsection.

J. Peer Review: If the director rejects a supply/demand study based upon the recommendations of the district engineer, or if the water supplier or any customer on the water supplier's distribution system disputes any conclusions of the district engineer in his or her certification to the county, the concerned party may request peer review of the district engineer's findings and conclusions.

1. The county will engage the peer reviewer at the expense of the party requesting peer review. The county will maintain a list of technical specialists with education and professional training in engineering and geology as it relates to water resources engineering and water conservation.

2. The county will engage the peer reviewer from the list of technical specialists to complete the peer review of a water supplier's supply/demand study. The peer reviewer shall review the supply/demand study and related data without further input from the water supplier, the district engineer or the county, and issue a final written report to the county director of health documenting the findings of the peer review process. The peer reviewer's report shall be unsigned to protect the integrity of the process, but will be a public document and accessible as provided by state law.

3. The decision of the peer reviewer will be issued within fifteen (15) working days of the submittal of the contested supply/demand study and the district engineer's conclusions to the peer reviewer.

4. The director of health shall then act upon the recommendations of the peer reviewer and either approve or reject the annual supply/demand study based upon that recommendation.

K. Appeal Of Decision Of County Director Of Health: The decision of the director shall be deemed the final action of the county. Any party aggrieved by a decision of the director under this chapter may seek judicial review in accordance with the laws of the state.

L. Audit Of Water Supplier: The county director of health, based upon the recommendation of the district engineer, may require an audit of water supplier's data if the district engineer questions the validity of the submitted data.

1. Independent Consultant: The audit requirement may include the review of data by an independent professional engineering consultant hired by the county at the water supplier's expense to review and verify submitted data.

2. On Site Audit: If it appears from audit that data has been falsified or is inaccurate, the district engineer may conduct a full on site audit of all of the water supplier's records and all facilities, require DDW supervised well and other water source performance testing, review all meter reading data, water quality testing and data, and any other review reasonably related to compliance with state and county regulations, all at the water supplier's expense.

3. Referral Of Possible Civil Or Criminal Violations To State And County Officials: The district engineer will refer any apparent violations of state law and DDW regulations to DDW compliance officers for enforcement action. In addition, the falsification of any reported data shall constitute a class C misdemeanor and will be prosecuted by the county attorney. (Ord. 436, 11-14-2002)

10-10-11: PLAT NOTE ELIMINATED; ANNUAL REVIEW AND FEASIBILITY REPORT:

A. No Recording Against Land Titles: Any plat note inserted into a recorded development plat in accordance with section 1(2)(c) of ordinance 400 is hereby deemed deleted from such plat and the plat note is of no further force or effect and shall be considered to not be of record or to provide any legal notice.

B. Disclaimer: Nothing contained in this chapter, or in the district engineer's certification of a supply/demand study to the county director of health shall be construed by any developer, customer or prospective customer of a water supplier as a guarantee by the county, the state or the district engineer, that water will always be available for service from the water supplier. By accepting payment of impact fees and connection fees and the issuance of commitment of service letters, a water supplier assumes full and complete liability to its customers if it cannot provide service to those customers holding commitment of service letters or to those customers who are connected to the water distribution system, except where service is deferred or interrupted for causes reasonably beyond the control of the water supplier. (Ord. 436, 11-14-2002)

10-10-12: WATER CONCURRENCY ADVISORY BOARD:

There is created a water concurrency advisory board to assist the county director of health in ensuring that quality drinking water, irrigation water and snowmaking water, and water for other beneficial uses will be available to all of the citizens of the county in quantities sufficient to meet current demands and projected growth. The water concurrency advisory board was initially created and appointed under ordinance 400 and that board shall continue to serve as the water concurrency advisory board under this chapter, and their terms shall run for the balance of their original appointed terms under ordinance 400.

A. Duties: The water concurrency advisory board shall advise the county director of health on all matters with water concurrency, water conservation, recommendations of individuals for employment as the interim district engineer, and future amendments to this chapter.

B. Board Members: There shall be up to nine (9) members of the water concurrency advisory board appointed by the county board of commissioners.

C. Organization: Five (5) of the initial members shall be appointed for four (4) year terms and the remaining four (4) members shall be appointed for two (2) year terms. Thereafter, all terms shall be for four (4) years. The county board of commissioners shall appoint a chairperson, who shall serve for a term of two (2) years.

D. Meetings: The WCAB shall establish its own meeting schedule and shall provide public notice of any and all such meetings in the manner provided by law. (Ord. 436, 11-14-2002)

10-10-13: INTERIM OPERATING RULES PENDING FULL IMPLEMENTATION:

In the interim, between the effective date hereof and the full implementation date when concurrency ratings have been designated by the director of health, the following documents shall be required prior to the issuance of a building permit, final subdivision plat or site plan:

A. A feasibility letter for the proposed water supply issued by the state division of drinking water.

B. Evidence of coordination with the public or private water service provider, including an agreement for service and an indication of the service area of the proposed water supplier, commitment of service letter or other binding arrangement for the provision of water services.

C. Evidence that water rights have been obtained, including an application for appropriation or change application endorsed by the state engineer pursuant to Utah Code Annotated section 73-3-10, and a certificate of appropriation or certificate of change issued in accordance with Utah Code Annotated section 73-3-16. The county shall not accept an application or certificate that has lapsed, expired or

been revoked by the state engineer.

D. A certificate of convenience and necessity or an exemption therefrom, issued by the state public service commission, for the proposed water supplier. (Ord. 436, 11-14-2002)

10-10-14: CONSERVATION REQUIREMENT:

All water companies regulated under this chapter, as a part of their supply/demand study, will adopt a county approved comprehensive water conservation plan consistent with this title and the general plan, which conservation plan will be implemented as soon as reasonably practicable. Except during the summer of 2002 and/or in the case of a public safety emergency, no water system will be allowed to use banked water until such time as their water conservation plan has been approved. The water conservation plan, at a minimum, will include a graduated rate structure for excess water usage, an education component to educate and encourage its consumers to conserve and use water wisely, and may include rules and regulations to implement a reduction of use and/or a moratorium on irrigation water usage, a moratorium on the installation of new landscaping, and also on new service connections, when conditions warrant, to ensure that no interruption of inside culinary use occurs, and that there remains a reasonable irrigation water supply within the system to preserve existing and established landscaping and fire flow storage for existing connections occurring during drought or other shortage conditions. (Ord. 436, 11-14-2002)

10-10-15: ENFORCEMENT:

A. Criminal Penalties: Each water supplier, its responsible owners, board members, officers, agents and employees which wilfully or with criminal recklessness or criminal negligence, as defined by the Utah criminal code, supplies any false information to the county in its annual supply/demand study, in addition to being subject to prosecution for falsification in official matters under Utah Code Annotated title 76, chapter 8, is guilty of a class B misdemeanor and subject to a fine of not more than two hundred dollars (\$200.00) per day for each day from the filing of the supply/demand study until the supply/demand study has been amended to eliminate the false information and provide the correct information.

B. Civil Penalties: Each water supplier, including its responsible owners, board members, officers, agents, and employees that fails to file its annual supply/demand study in a timely fashion is subject to a civil penalty not to exceed two hundred dollars (\$200.00) per calendar day until the annual supply/demand study is filed with the county and approved. In the event the supply/demand study is not filed by February 1, the daily fine will increased to five hundred dollars (\$500.00) per day. If the supply/demand study is not filed by March 1, the daily fine is increased to one thousand dollars (\$1,000.00) per day. Additionally, the county will revoke any past certification, and all new connections to the water system will be deferred until such time as the water supplier complies with the requirements of this chapter and pays in full all outstanding fines. This civil penalty is in addition to all other criminal and civil penalties under this chapter and under applicable state and federal laws and regulations.

C. Customer Relief: Any customer who is directly impacted by failure of a water supplier to meet the commitments as set forth in its annual supply/demand study, unless the service commitment is deferred for unavoidable causes as provided in this chapter, is entitled to recover from the water supplier, including its officers, board members, officers, agents and employees, all available damages in law and at equity, together with reasonable court costs and attorney fees, and is also entitled to recover from the water supplier a civil penalty of not more than two hundred dollars (\$200.00) per day until it receives its water in the required quantity and quality. Moreover, no water supplier may require any customer, owner or developer to assume the risk of the water supplier's nonperformance, or to waive any available damages.

D. Remedies Cumulative: These remedies and enforcement provisions shall be in addition to all other statutory and regulatory remedies under state and federal law. (Ord. 436, 11-14-2002)